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FUTUREWEI TECHNOLOGIES, INC.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

YIREN HUANG, an individual, and CNEX  
Labs, Inc., Delaware corporation,

Plaintiff,

v.

FUTUREWEI TECHNOLOGIES, INC., a  
Texas corporation; and DOES 1 through 10,

Defendant.

Case No. 5:18-cv-00534-BLF

**DEFENDANT'S NOTICE OF MOTION  
AND MOTION TO DISMISS OR, IN  
THE ALTERNATIVE, TO TRANSFER,  
OR TO STAY**

(Santa Clara County Superior Court Case  
No. 17CV321153)

Date: April 5, 2018  
Time: 9:00 a.m.  
Courtroom: 3 - 5th Floor

Complaint Filed: Dec. 28, 2017

**TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on April 5, 2018, at 9:00 a.m., or as soon thereafter as counsel may be heard in Courtroom 3 - 5th Floor, of the above-entitled Court, located at 280 South 1st Street, San Jose, California 95113, Defendant Futurewei Technologies, Inc. ("Futurewei" or "Defendant") will move and hereby does move to dismiss Plaintiffs Yiren Huang ("Huang") and CNEX Labs, Inc.'s ("CNEX") (collectively "Plaintiffs") Complaint under 28 U.S.C. § 1404(a). Should this Court decide not to dismiss Plaintiffs' Complaint, Futurewei alternatively requests that this action be transferred to the United States District Court for the Eastern District of Texas.

Futurewei moves this Court to enforce the mandatory Texas forum selection clause contained in the employment agreement on which Plaintiffs seek relief, and to dismiss this action or transfer it to the appropriate venue, Eastern District of Texas. Such forum selection clauses are *prima facie* valid, and courts routinely enforce them to dismiss or transfer actions brought by former employees seeking declaratory relief on employment agreements containing such clauses. *Atlantic Marine Const. Co., Inc. v. U.S. Dist. Court for W. Dist. of Texas*, 134 S. Ct. 568, 579 (2013) ("enforcement of valid forum-selection clauses, bargained for by the parties, protects their legitimate expectations and furthers vital interests of the justice system ... a valid forum-selection clause [should be] given controlling weight in all but the most exceptional cases.").

Moreover, courts routinely enforce forum selection clauses against non-signatories, such as Huang's current employer CNEX (which he also co-founded), who are closely related to the contractual relationship. *See Manetti-Farrow, Inc. v. Gucci America, Inc.*, 858 F.2d 509, 514 (9th Cir. 1988); *Meras Engineering, Inc. v. CH20, Inc.*, No. C-11-0389 EMC, 2013 WL 146341, \*13 (N.D. Cal. Jan. 14, 2013) (enforcing employment agreement's Washington forum selection clause against former employees and their non-signatory new employer who sought to invalidate an employment agreement with the former employer).

Plaintiffs cannot demonstrate any legally justifiable basis to avoid dismissal or transfer. Accordingly, this Court should reject Plaintiffs' attempt to clothe themselves with California's alleged public policies to analytically leapfrog the mandatory forum selection clause. California federal courts have repeatedly held that courts need not and should not address purported public policy concerns in a choice of law analysis where a valid forum selection clause exists, even in cases involving alleged violations of

1 California Business and Professions Code section 16600.

2 In the final alternative, Futurewei moves for an order staying the instant action until the completion  
3 of the action in the parties' parallel, pending action in Eastern District of Texas, in order to conserve judicial  
4 resources, minimize duplicative litigation, and avoid the risk that inconsistent obligations will be imposed  
5 on the parties. *See Huawei Technologies Co. Ltd. et al. v. Huang et al.*, No. 4:17-cv-00893 (E.D. Tex., filed  
6 Dec. 28, 2017).

7 This motion is based on this Notice of Motion, the Memorandum of Points and Authorities, the  
8 Declarations of Paul C. Hashim and D. Joshua Salinas, the Request for Judicial Notice, and any other papers  
9 on file herein, and upon such other and further oral and written information as may be presented at or before  
10 the hearing on this motion.

11 DATED: January 31, 2018

SEYFARTH SHAW LLP

12  
13 By: /s/ Robert B. Milligan

Robert B. Milligan

D. Joshua Salinas

Attorneys for Defendant FUTUREWEI,  
TECHNOLOGIES, INC.